



9110-04-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

**[Docket Number USCG-2020-0245]**

**RIN 1625-AA08**

**Special Local Regulation; Potomac River, Between Jones Point, VA, and National Harbor, MD**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

---

**SUMMARY:** The Coast Guard is establishing a temporary special local regulation for certain waters of the Potomac River. This action is necessary to provide for the safety of life on these navigable waters located at Washington, DC, during a swim event on August 23, 2020. This rule will prohibit persons and vessels from entering the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or the Coast Guard Patrol Commander.

**DATES:** This rule is effective from 6:30 a.m. to 11 a.m. on August 23, 2020.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0245 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Ron Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410-576-2674, e-mail [Ronald.L.Houck@uscg.mil](mailto:Ronald.L.Houck@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
PATCOM	Coast Guard Patrol Commander
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because an NPRM would be impracticable and contrary to the public interest. On April 20, 2020, WaveOne Open Water of Washington, DC, notified the Coast Guard that it will be conducting “Washington’s Crossing: Swim Across the Potomac” from 7:30 a.m. to 10 a.m. on August 23, 2020. The swim event consists of approximately 175 participating swimmers competing on a designated, marked course located in National Harbor on the Potomac River, downriver of the Wilson Bridge in Washington, DC. We must establish

this safety zone by August 23, 2020, to ensure the safety of participants and nearby waterway users. Hazards from the swim competition include participants swimming within and adjacent to the designated navigation channel and interfering with vessels intending to operate within that channel, as well as swimming within approaches to local public and private marinas and public boat facilities.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with the “Washington’s Crossing: Swim Across the Potomac” event.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Maryland-National Capital Region (COTP) has determined that potential hazards associated with the swim event to be held August 23, 2020, will be a safety concern for anyone intending to participate in the event and for vessels that operate within and near the specified waters of the Potomac River. The purpose of this rule is to ensure the safety of vessels and the navigable waters in the regulated area before, during and after the scheduled event.

### **IV. Discussion of the Rule**

This rule establishes a special local regulation from 6:30 a.m. to 11 a.m. on August 23, 2020. The special local regulation will cover all navigable waters of the Potomac River, encompassed by a line connecting the following points, beginning at Jones Point Park, VA, shoreline at latitude 38°47’35” N, longitude 077°02’22” W, thence

east along the northern extent of the Woodrow Wilson Memorial (I-495/I-95) Bridge, at mile 103.8, to the Rosilie Island shoreline at latitude 38°47'36" N, longitude 077°01'32" W, thence south along the Maryland shoreline to latitude 38°46'52" N, longitude 077°01'13" W, at National Harbor, MD shoreline, thence west across the Potomac River to the George Washington Memorial Parkway highway overpass and Cameron Run shoreline at latitude 38°47'23" N, longitude 077°03'03" W, thence north along the Virginia shoreline to the point of origin. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 7:30 a.m. to 10 a.m. swim event. No vessel or person will be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on size, location and duration of the regulated area, which would impact a small designated area of the Potomac River for less than 5 hours. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM Marine Channel 16 about the status of the regulated area. Moreover, the rule will allow vessels and persons to seek permission to enter the regulated area.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small

Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires

Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR Part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area for less than 5 hours. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Memorandum for Record supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received

without jeopardizing the safety or security of people, places or vessels.

### **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

### **PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.T05-0245 to read as follows:

#### **§ 100.T05-0245 Washington's Crossing: Swim Across the Potomac, Potomac River, National Harbor, MD.**

- (a) *Regulated area.* The regulations in this section apply to the following area:

All navigable waters of the Potomac River, encompassed by a line connecting the following points, beginning at Jones Point Park, VA, shoreline at latitude 38°47'35" N, longitude 077°02'22" W, thence east along the northern extent of the Woodrow Wilson Memorial (I-495/I-95) Bridge, at mile 103.8, to the Rosilie Island shoreline at latitude 38°47'36" N, longitude 077°01'32" W, thence south along the Maryland shoreline to latitude 38°46'52" N, longitude 077°01'13" W, at National Harbor, MD shoreline, thence west across the Potomac River to the George Washington Memorial Parkway highway overpass and Cameron Run shoreline at latitude 38°47'23" N, longitude 077°03'03" W, thence north along the Virginia shoreline to the point of origin. These coordinates are based on datum NAD 1983.



(b) *Definitions.* As used in this section---

*Captain of the Port (COTP) Maryland-National Capital Region* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

*Coast Guard Patrol Commander (PATCOM)* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

*Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

*Participant* means all persons and vessels registered with the event sponsor as participating in the “Washington’s Crossing: Swim Across the Potomac” swim event, or otherwise designated by the event sponsor as having a function tied to the event.

(c) *Regulations.* (1) Except for participants and vessels already at berth, all non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the COTP Maryland-National Capital Region or PATCOM.

(2) To seek permission to enter, contact the COTP Maryland-National Capital Region at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz) or the PATCOM on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). If permission is granted, the non-participant may enter the regulated area or must pass directly through the regulated area as instructed by PATCOM. A vessel within the

regulated area must operate at safe speed that minimizes wake. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP Maryland-National Capital Region or PATCOM.

(3) The COTP Maryland-National Capital Region will provide notice of the regulated area through advanced notice via Fifth Coast Guard District Local Notice to Mariners, broadcast notice to mariners, and on-scene official patrols.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other federal, state, and local agencies.

(e) *Enforcement period.* This section will be enforced from 6:30 a.m. through 11 a.m. on August 23, 2020.

Dated: August 17, 2020.

Joseph B. Loring,  
Captain, U.S. Coast Guard,  
Captain of the Port Maryland-National Capital Region.

[FR Doc. 2020-18405 Filed: 8/19/2020 8:45 am; Publication Date: 8/20/2020]